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Creditors of 360networks (USA) inc., et al., and the
Estate of 360networks (USA) inc.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11 Cases
:
360NETWORKS (USA) INC., et al., : Case No. 01-13721 (ALG)
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Debtors. : Jointly Administered
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THE OFFICIAL COMMITTEE OF UNSECURED :
CREDITORS OF 360NETWORKS (USA) INC., et :
al., and 360NETWORKS (USA) INC., by and : Adversary No.: 03--_____(ALG)
through THE OFFICIAL COMMITTEE OF :
UNSECURED CREDITORS OF 360NETWORKS :
(USA) INC., et al., :
:
Plaintiffs, :
:
-- against -- :
:
THE PUBLIC UTILITIES COMMISSION OF :
THE STATE OF CALIFORNIA and MICHAEL R. :
PEEVEY, LORETTA M. LYNCH, CARL W. :
WOOD, GEOFFREY F. BROWN, AND SUSAN :
P. KENNEDY, in their official capacities as :
Commissioners of the Public Utilities Commission :
of the State of California, and not as individuals,
:
Defendants.
:
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COMPLAINT

The Official Committee of Unsecured Creditors of 360networks (USA) inc., et al. (the “Committee”) and 360networks (USA) inc. (“360”), by and through the Committee in the Chapter 11 bankruptcy proceedings of 360 and its debtor subsidiaries (collectively, “Debtors”), by and through the undersigned counsel, Sidley Austin Brown & Wood LLP, for its complaint against the Public Utilities Commission of the State of California (“CPUC”), aver as follows:

NATURE OF ACTION

1. Plaintiffs bring this adversary proceeding seeking the avoidance, recovery, and turnover of certain preferential transfers in the aggregate sum of at least \$354,604.82 made to CPUC by 360 on or within (90) days of the Petition Date (as defined below), pursuant to Rule 7001, et seq., of the Federal Rules of Bankruptcy Procedure, Sections 547 and 550 of Title 11 of the United States Code (the “Bankruptcy Code”), the First Amended Joint Plan of Reorganization Proposed by Debtors and 360networks (Holdings) Ltd., as amended by the Confirmation Order (as defined below) (the “Plan”), and the Order Confirming First Amended Joint Plan of Reorganization Proposed by Debtors and 360networks (Holdings) Ltd., signed by this Court on October 1, 2002 (the “Confirmation Order”).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the adversary proceeding, which is a core proceeding, pursuant to 28 U.S.C. §§ 157 and 1334 and 11 U.S.C. §§ 547 and 550. This adversary proceeding is a “core” proceeding to be heard and determined by the Bankruptcy Court pursuant to 28 U.S.C. § 157(b)(2)(A) and (F).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

THE PARTIES

Plaintiffs

4. 360 is a Nevada corporation that maintains its principal place of business at 2401 4th Avenue, Suite 1100, Seattle, Washington 98121.

5. 360 brings this action by and through the Committee appointed by the Office of the United States Trustee for the Southern District of New York in the Chapter 11 bankruptcy proceedings of the Debtors, in accordance with the Plan and Confirmation Order.

6. The Committee is authorized and has the exclusive right to commence and prosecute this action on behalf of the Debtors' bankruptcy estates (the "Debtors' Estates") and in the name of and for the benefit of the Debtors pursuant to Section 4.3 of the Plan, Paragraphs 31 and 35 of the Confirmation Order, and Sections 547, 550, and 1107 of the Bankruptcy Code. Pursuant to the Plan and the Confirmation Order, the Committee is deemed the representative of the Debtors' Estates under Section 1123(b) of the Bankruptcy Code solely for purposes of commencing and prosecuting the claims asserted in this action.

Defendant

7. Upon information and belief, Defendant CPUC is headquartered at 505 Van Ness Avenue, San Francisco, California 94102-3298.

8. Defendant Michael R. Peevy is the President of the CPUC. Defendants Loretta M. Lynch, Carl W. Wood, Geoffrey F. Brown, and Susan P. Kennedy are Commissioners of the CPUC (the "Commissioners"). The Defendants are being sued in their official capacities only, not as individuals.

BACKGROUND

9. On June 28, 2001 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors’ Chapter 11 cases have been consolidated for procedural purposes only.

10. On July 12, 2001, the Office of the United States Trustee for the Southern District of New York appointed the Committee to represent all unsecured creditors of the Debtors pursuant to Section 1102 of the Bankruptcy Code.

11. The Plan was confirmed on October 1, 2002, and became effective as of November 12, 2002.

FIRST CLAIM FOR RELIEF (AVOIDANCE OF PREFERENTIAL TRANSFERS AGAINST CPUC (11 U.S.C. § 547))

12. The Plaintiffs reallege and incorporate by reference the averments contained in paragraphs 1 through 11 above.

13. On or within ninety (90) days before the Petition Date, 360 made preferential transfers to or for the benefit of CPUC in the aggregate sum of at least \$354,604.82 (the “Transfers”). See Exhibit A attached hereto and incorporated herein.

14. Each of the Transfers was made to CPUC, for or on account of an antecedent debt owed by 360 before each Transfer was made.

15. CPUC was a creditor at the time of such Transfers.

16. The Transfers were made by 360 during the 90-day period preceding the Petition Date, while 360 was insolvent.

17. By reason of the Transfers, CPUC was able to receive more than it would otherwise receive if (a) these cases were cases under Chapter 7 of the Bankruptcy Code, (b) the

Transfers had not been made, and (c) CPUC received payment of such debts in such Chapter 7 proceeding in the manner specified in the Bankruptcy Code.

18. By reason of the foregoing, the Plaintiffs are entitled to an order of this Court avoiding each and all of the Transfers to CPUC, pursuant to Section 547(b) of the Bankruptcy Code, the Plan, and the Confirmation Order.

**SECOND CLAIM FOR RELIEF
(TURNOVER OF AVOIDED PREFERENTIAL
TRANSFERS AGAINST CPUC (11 U.S.C. § 550))**

19. The Plaintiffs reallege and incorporate by reference the averments contained in paragraphs 1 through 18 above.

20. By reason of the foregoing, the Plaintiffs are entitled to recover from CPUC the property transferred or the value of the property transferred pursuant to Section 550 of the Bankruptcy Code, the Plan, and the Confirmation Order.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs pray that this Court enter a judgment in their favor against CPUC granting the following relief and, further, that it enter an order compelling Defendant Peevy and the Commissioners to comply with said judgment:

A. On the First Claim for Relief, pursuant to Section 547 of the Bankruptcy Code, declaring that the Transfers be and are avoided;

B. On the First Claim for Relief, declaring that CPUC pay the amount of at least \$354,604.82, representing the amount owed by CPUC, plus all interest due as permitted by law;

C. On the Second Claim for Relief, pursuant to Section 550 of the Bankruptcy Code, declaring that CPUC pay the amount of at least \$354,604.82, representing the amount owed by CPUC, plus all interest due as permitted by law;

D. Providing, pursuant to Section 502(d) of the Bankruptcy Code, that any and all claims against 360 filed in these cases by CPUC shall be disallowed until it repays in full the amount of the Transfers plus all applicable interest;

E. Awarding to plaintiffs all costs, reasonable attorneys' fees, and interest; and

F. For such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 18, 2003

SIDLEY AUSTIN BROWN & WOOD LLP

By: /s/ Norman N. Kinel
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